

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Proposal to implement a competitive	:	No. 05-0159
procurement process by establishing	:	
Rider CPP, Rider PPO-MVM, Rider TS-CPP	:	
and revising Rider PPO-MI	:	

**RESPONSE OF THE PEOPLE OF THE STATE OF ILLINOIS  
TO FPL ENERGY POWER MARKETING'S  
PETITION FOR LEAVE TO INTERVENE**

---

The People of the State of Illinois (“the People”), by and through Lisa Madigan, Attorney General of Illinois, pursuant to Section 190 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), 83 Ill. Admin. Code § 200.190, hereby respond in opposition to the Petition for Leave to Intervene by FPL Energy Power Marketing, Inc. (“FPL”). In support of this Response, the People state as follows:

1. On January 24, 2006, the Commission issued an Order (“the Order”) in this docket which approves market-based rates for electric service that the Commission has not “declared competitive” pursuant to 220 ILCS 5/16-113(a). These tariffs are scheduled to go into effect on January 2, 2007.
2. The Appellate Court for the Second District (“the Court”) is currently reviewing the Order in a consolidated appeal (under general no. 2-06-0381) (“the Appeal”) to determine, *inter alia*, whether the

Commission has authority, under the Public Utilities Act, to approve market-based rates for electric service that the Commission has not “declared competitive.”

3. On December 7, 2006, the People asked the Commission to stay implementation of the 2007 tariffs for electric service that has not been declared competitive, pending final disposition of the Appeal.

4. On December 8, 2006, the Commission issued a scheduling order requiring responses to the People’s motion to be filed by 12:00 noon on December 12, 2006, and requiring replies to be filed by 5:00 p.m. on that same date.

5. On December 13, 2006, FPL filed a Petition for Leave to Intervene. FPL is an electricity supplier that was a successful bidder in Commonwealth Edison Company’s September 2006 auction. (See FPL Pet. at 1.) The Appellate Court previously denied FPL’s motion to intervene in the Appeal of the Order, but granted FPL leave to file a brief *amicus curiae*.

6. On December 18, 2006, nearly a week after the petition to intervene was filed, the People received FPL Energy’s petition via U.S. mail. FPL did not provide electronic service to the parties to this docket, even though all parties have consented to electronic service.

7. FPL’s petition to intervene is too late. All parties to this docket who wished to file a Response to the People’s Motion – the sole matter before the Commission in this docket while the Appeal is pending

-- were given five days to prepare and serve their Responses. Replies were filed within a matter of hours. The People's motion is now fully briefed and ready for the Commission's ruling. The time for FPL to seek leave to intervene has passed.

8. FPL's tardy petition attempts to disrupt the expedited briefing schedule set by the Commission on December 8, 2006. If FPL wished to intervene, it should have sought leave to do so before the deadlines for responses and replies on the People's motion to stay implementation of the 2007 rates.

9. Furthermore, FPL's interests are already adequately represented in this docket by Midwest Independent Power Suppliers ("MWIPS") and Electric Power Supply Association ("EPSA"). MWIPS is a group of Midwestern electricity suppliers and EPSA is the national trade association representing electricity suppliers. MWIPS and EPSA members and affiliates were successful bidders in ComEd's September 2006 auction. Thus, FPL's "material interest as a power supplier" is already represented in this docket.

10. Because FPL's petition is untimely and FPL's interests are already represented by other parties to this docket, the Commission should deny FPL's petition to intervene.

11. The People also oppose FPL's request to participate in these proceedings while its petition for leave to intervene is pending, pursuant to 83 Ill. Admin. Code §200.200(b), for all of the reasons stated herein.

WHEREFORE, the People respectfully ask the Commission to deny  
the Petition For Leave To Intervene By FPL Energy Power Marketing, Inc.

Respectfully Submitted,

The People of the State of Illinois  
By LISA MADIGAN, Attorney General

---

Susan Hedman  
Senior Assistant Attorney General

Office of the Illinois Attorney General  
100 West Randolph Street, Floor 11  
Chicago, Illinois 60601  
Telephone: (312) 814-4947  
[shedman@atg.state.il.us](mailto:shedman@atg.state.il.us)

December 19, 2006

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	)	
	)	Docket No. 05-0159
Proposal to implement a competitive	)	
Procurement Process by establishing	)	
Rider CPP, Rider PPO	)	
MVM, Rider TS-CPP and revising	)	
Rider PPO-MI	)	

**NOTICE OF FILING**

Please take note that on December 19, 2006, we submitted a Response To Petition For Leave To Intervene By FPL Energy Power Marketing, Inc. for filing in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

Susan Hedman  
Senior Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, Susan Hedman, certify that the foregoing documents, together with a Notice of Filing were sent to the members of the Illinois Commerce Commission and all parties of record listed on the official service list by email or regular mail with postage prepaid on December 19, 2006. Paper copies will be provided upon request.

Susan Hedman  
Office of the Illinois Attorney General  
100 West Randolph Street - 11<sup>th</sup> Floor  
Chicago, Illinois 60601  
Telephone: (312) 814-4947  
Facsimile: (312) 814-3212  
[shedman@atg.state.il.us](mailto:shedman@atg.state.il.us)